



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

AT

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,839	06/21/2002	Marie Flamand	03495.0213	3749

22852 7590 03/31/2004

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER

STUCKER, JEFFREY J

ART UNIT PAPER NUMBER

1648

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/980,839

Applicant(s)

FLAMAND ET AL.

Examiner

Jeffrey Stucker

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 27-30, 38, 41, and 42.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Art Unit: 1648

This Office Action is in response to the amendment after final rejection filed 2/18/04. Claims 21-26, 31-37, 39, and 40 are withdrawn from consideration as being drawn to non-elected inventions and claims 27-30, 38, 41, and 42 remain under final rejection. The amendment will not be entered because the limitations of the new claims, i.e., primary infection, sensitivity of at least 1 ng/ml, and the use of different species as sources of antibodies, raise new issues that would require further consideration and/or search, raise the issue of new matter, and do not place the application in better form for appeal. Further, there is a question of the deposited material meeting the requirements of the Budapest treaty.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Even if the amendment were entered, the rejection of claims 27-30 and 42 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention **would be maintained**. Even though the revelation antibody would be specifically recited as being labeled, this does not preclude the first antibody from being labeled, thereby not distinguishing them.

If the amendment were to be entered, the rejection of claims 27-30 under 35 U.S.C. § 103(a) as obvious over the admissions in the specification in view of both Zuk et al. (US 4281061) and Crooks et al. (J. of Gen. Vir., 1994) may be withdrawn because the art does not teach or suggest antibodies with high affinity binding for hexameric NS1.

Art Unit: 1648

The rejection of claim 38 under 35 U.S.C. § 103(a) as obvious over the admissions in the specification in view of both Zuk et al. (US 4281061) and Crooks et al. (J. of Gen. Vir., 1994) further in view of Harlow et al. **is maintained**. See above.

Claim 27 and new claim 41 are rejected under 35 U.S.C. § 103(a) as obvious over the admissions in the specification in view of both Zuk et al. (US 4281061) and Crooks et al. (J. of Gen. Vir., 1994) further in view of Harlow et al. See above.

Claim 27 and new claim 42 are rejected under 35 U.S.C. § 103(a) as obvious over the admissions in the specification in view of both Zuk et al. (US 4281061) and Crooks et al. (J. of Gen. Vir., 1994) further in view of Tijssen. See above.

No claims are allowed.

Papers related this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

The Group 1600 Official Fax number is: (703) 872-9306.

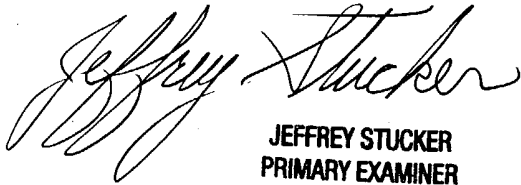
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 1648

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center representative whose telephone number is (571)-272-1600.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Stucker whose telephone number is (571)-272-0911. The examiner can normally be reached Monday to Thursday from 7:00am-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (571)-272-0902.



JEFFREY STUCKER  
PRIMARY EXAMINER